

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STEVE ABOU-ARRAGE,

Petitioner,

v.

WARDEN FCI McKEAN,

Respondent.

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**CA 06-41Erie
District Judge Maurice B. Cohill, Jr.
Magistrate Judge Baxter**

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on February 21, 2006, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation was filed on August 14, 2006. It recommended that Petitioner's conviction for being a convicted felon in possession of a firearm be vacated as a matter of law, and that the petition be denied to the extent that it seeks a reduced sentence on Petitioner's conviction for conspiracy to possess with intent to distribute a controlled substance. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail at FCI McKean, where he is incarcerated, and on Respondent. No objections were filed.

Our de novo review of the petition and documents in this case has revealed a factual error in the report and recommendation. The first sentence of the Report section reads as follows: "Petitioner, Steve Abou-Arrage, is a prisoner presently housed within this district serving an aggregate sentence of 255 months incarceration which was imposed by the United States District Court of the Southern District of Florida in July 1997." However, the sentencing court did not impose an aggregate sentence. Documents in this case show that Petitioner was sentenced to 120 months at Count One of the superseding criminal information for possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and to

135 months at Count Two of the second superseding indictment for conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846. These terms of imprisonment were imposed to run concurrently.

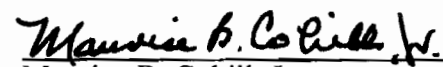
This factual correction does not affect the legal conclusions set forth in the report and recommendation.

Accordingly, after de novo review of the petition and documents in this case, along with the report and recommendation, the following Order is entered:

AND NOW, to-wit, this 9th day of November, 2006, IT IS HEREBY ORDERED that the petition for writ of habeas corpus be and hereby is GRANTED as to Petitioner's conviction and sentence at Count One of Criminal No. 96-8084 of the United States District Court for the Southern District of Florida, and the sentence of 120 months imposed at Count One is HEREBY VACATED.

IT IS FURTHER ORDERED that the petition for writ of habeas corpus be and hereby is DENIED to the extent that Petitioner seeks a reduction of the sentence of 135 months imposed at Count Two. That sentence shall remain in full force and effect.

The report and recommendation of Magistrate Judge Baxter dated August 14, 2006, as factually corrected, be and hereby is adopted as the opinion of the Court.


Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge

all parties of record